

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF COMMERCE

In the Matter of Dan Scofield, d/b/a
Scofield Construction.

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

The above-entitled matter came on for a prehearing conference before Administrative Law Judge Barbara L. Neilson on March 29, 2005, at 1:30 p.m. at the Office of Administrative Hearings in Minneapolis, Minnesota. Michael J. Tostengard, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, Minnesota 55101-2130, appeared on behalf of the Department of Commerce (the Department). Dan Scofield, d/b/a Scofield Construction (the Respondent), No. 32 South Midway Street, P.O. Box 32, Stanchfield, MN 55080, did not appear. The OAH record closed at the conclusion of the prehearing conference.

NOTICE

This Report is a recommendation, not a final decision. The Deputy Commissioner of Commerce will make the final decision after a review of the record. The Deputy Commissioner may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Deputy Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Deputy Commissioner. Parties should contact Kevin M. Murphy, Deputy Commissioner, Minnesota Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, Minnesota 55101, telephone (651) 296-9411, to ascertain the procedure for filing exceptions or presenting argument to the Deputy Commissioner.

If the Deputy Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Deputy Commissioner, or upon the expiration of the deadline for doing so. The Deputy Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

STATEMENT OF ISSUES

The issues presented in this case are whether the Commissioner should take disciplinary action against the Respondent because:

(1) the Respondent failed to respond to the Department's requests for information and failed to appear for questioning as requested by the Commissioner, in violation of Minn. Stat. § 45.027, subd. 1a;

(2) the Respondent falsely stated to the Department that he would mail a check to satisfy a judgment against him, in violation of Minn. Stat. § 45.027, subd. 7(3);

(3) the Respondent performed negligently or in breach of contract causing injury or harm to the public in failing to complete contracted-for work on two projects, in violation of Minn. Stat. § 326.91, subd. 1(4); and

(4) the Respondent demonstrated financial irresponsibility in failing to satisfy the judgment against him, in violation of Minn. Stat. § 326.91, subd. 1(6).

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On February 7, 2005, the Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges initiating this contested case proceeding were served on the Respondent at No. 32 South Midway Street, P.O. Box 32, Stanchfield, MN 55080. The Prehearing Conference was scheduled to take place at 1:30 p.m. on March 29, 2005, at the Office of Administrative Hearings.

2. The Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges contained the following language:

The Respondent's failure to appear at the prehearing conference may result in a finding that the Respondent is in default, that the Department of Commerce's allegations contained in this Notice and Order may be accepted as true, and its proposed action may be upheld.^[1]

The Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges also notified the Respondent that his residential building contractor's license would be subject to disciplinary action if the allegations against him were found to be true.

3. The Respondent did not appear at the Prehearing Conference, nor did he contact the Department or the Administrative Law Judge to notify them that he would be unable to appear for the Prehearing Conference.

4. Because the Respondent failed to appear at the Prehearing Conference in this matter, he is in default.

5. Pursuant to Minn. Rules part 1400.6000, the allegations contained in the Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of

Charges at paragraphs 1-9 are hereby taken as true and incorporated into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 45.027, and 326.91.

2. The Notice of and Order for Hearing, Notice of Prehearing Conference, and Statement of Charges issued by the Department was proper and the Department has fulfilled all relevant substantive and procedural requirements of law and rule.

3. The Respondent is in default. Pursuant to Minn. Rules part 1400.6000, the allegations contained in the Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges are hereby taken as true.

4. By failing to respond to the Department's requests for information and failing to appear before the Commissioner when requested to do so, the Respondent has violated Minn. Stat. § 45.027, subd. 1a.

5. By informing the Department that he would mail a check to satisfy a judgment against him, and by then failing to send the check, the Respondent provided false or misleading information to the Commissioner, in violation of Minn. Stat. § 45.027, subd. 7(3).

6. By failing to complete work on two projects, the Respondent performed negligently or in breach of contract so as to cause injury or harm to the public, in violation of Minn. Stat. § 326.91, subd. 1(4).

7. By failing to satisfy the judgment against him, the Respondent demonstrated financial irresponsibility, in violation of Minn. Stat. § 326.91, subd. 1(6).

8. Disciplinary action against the Respondent's license is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Commissioner of Commerce take disciplinary action against the Respondent.

Dated: April 11th, 2005

/s/ Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

Reported: Default.

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the Agency is required to serve its final decision upon each party and the Administrative Law Judge by first-class mail or as otherwise provided by law.

^[1] Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges dated February 3, 2005, at 3.